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***Via Certified Mailing - Return Receipt***

January 25, 2013

Owner, Operator and Facility Manager  
Hirschfeld Yacht Contracting  
400 Harbor Drive  
Sausalito, CA 94965

Clipper Yacht Company, LLC  
c/o Kenneth C. Pedersen Registered Agent  
310 Harbor Drive  
Sausalito, CA 94968

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act ("Clean Water Act")**

Dear Owners, Operators and/or Facility Managers:

## **NOTICE**

This Notice is provided on behalf of Northern California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at Hirschfeld Yacht Contracting, operating under the name Hirschfeld Yacht LLC ("Hirschfeld"), located at 400 Harbor Drive in Sausalito, see Map - Attachment A. Notice is being sent to Hirschfeld (the operator of the facility providing marine engine services) and Clipper Yacht Company, LLC (the property owner), collectively referred to as the "Dischargers," as the responsible owners, officers, operators or managers of the Sausalito marine facility. This Notice addresses the unlawful discharge of pollutants through one or more storm drains from the facility site into Richardson Bay, which flows directly into San Francisco Bay.

CWA § 505(b) requires a citizen to give notice of the intent to file suit 60 days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Hirschfeld marine facility in Sausalito. Consequently, the Dischargers are placed on formal notice by River Watch that after the expiration of 60 days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Dischargers for continuing violations of an effluent standard or limitation, permit condition or requirement, or Federal or State Order or Plan issued under the CWA in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Basin Plan, as exemplified by the incidents of non-compliance identified and outlined in this Notice.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

Based on information thus far received and reviewed, River Watch believes pollutants are discharged from marine engine and generator repair and maintenance operations at the Hirschfeld site, including, but not limited to, spent solvents, oil, heavy metals, ethylene glycol, acid/alkaline wastes, and detergents. River Watch contends the Dischargers have no individual facility National Pollutant Discharge Elimination System ("NPDES") permit authorizing these discharges, and have failed and are failing to apply for coverage and to comply with the General Industrial Storm Water Permit, NPDES Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ ("General Permit"). These discharges are in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to a water of the United States, in this instance San Francisco Bay, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

Without obtaining coverage under, and complying with the terms of, the General Permit, the Dischargers have failed to prepare and implement a Stormwater Pollution Prevention Plan ("SWPPP"), failed to develop and implement a Monitoring and Reporting Program, and failed to implement Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") to control the discharge of pollutants in storm water at the Sausalito facility.



2. *The activity alleged to constitute a violation.*

Operations at Hirschfeld include the repair, maintenance, installation and replacement of gas and diesel marine engines. The work, covered under Standard Industrial Code (SIC) 3732 (Ship and Boat Building and Repairing) is conducted both indoors and outdoors. The outdoor work takes place on an asphalt paved yard that slopes toward one or more storm drains and the waters of Richardson Bay. Both the storm drains and the navigable waters of Richardson Bay are in close proximity to the Hirschfeld site. Because the property on which the Hirschfeld site is located, owned by the Clipper Yacht Company, is subject to both rain events and periodic flooding, a range of pollutants including, but not limited to, used fluids, cleansers and degreasers can discharge to Richardson Bay. Eyewitness observations identify oil stains on the outdoor pavement, as well as exposed parts and equipment.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain an individual NPDES permit or seek coverage under the General Permit (or obtain exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch does not reveal the Dischargers as having obtained any required permit coverage under the CWA for the Hirschfeld operational site.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations are Hirschfeld Yacht Contracting, Hirschfeld Yacht, LLC, and Clipper Yacht Company, LLC.

4. *The location of the alleged violation.*

The location or locations of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is the permanent address of the facility at 400 Harbor Drive in the City of Sausalito, California, and includes the adjoining navigable waters of the tidally influenced Richardson Bay and the waters of San Francisco Bay, both of which are waters of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from January 22, 2008 to January 22, 2013. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving this notice is Northern California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472, referred to throughout this Notice as "River Watch." River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch is a non-profit corporation organized under the laws of the State of California, dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed to:

Jack Silver, Esq.  
Law Offices of Jack Silver  
David Weinsoff, Esq.  
P.O. Box 5469  
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### **BACKGROUND**

CWA § 301(a), 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. §1342.

As background, in 1987 Congress amended the Clean Water Act, adding among other provisions Section 402(p). CWA § 402(p) is entitled Municipal and Industrial Stormwater Discharges. It states:

"(1) General rule. Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under section 402 of this Act [this section]) shall not require a permit under this section for discharges composed entirely of stormwater."



Pollutants found on the Hirschfeld site are not "incidental" to stormwater runoff and cannot be considered "entirely storm water" for purposes of CWA § 402(p). They are incidental only to the Dischargers' onsite activities and would be nearly the same regardless of whether this site was in an urban or rural setting.

CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section of the Act to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California. The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA § 402(p).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions:

- Discharge Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to the waters of the United States.
- Discharge Prohibition A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.
- Receiving Water Limitation C(1) prohibits storm water discharges to any surface water or ground water that adversely impact human health or the environment.
- Receiving Water Limitation C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board water quality control plan (Basin Plan).

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent ("NOI"). The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a SWPPP. The SWPPP must comply with the standards of BAT and BCT. The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from a facility, and identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Section A(2)]. BMPs must implement BAT and BCT [Section B(3)].
- Include: a description of individuals and their responsibilities for developing and implementing the SWPPP [Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Section A(4)]; a list of significant materials handled and stored at the site [Section A(5)]; and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur [Section A(6)].
- Include an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective [Section A(7), (8)].
- Be periodically evaluated to ensure effectiveness and be revised where necessary [Section A(9),(10)].



As stated above, River Watch contends that in the operation of the Hirschfeld marine operation facility, the Dischargers have failed and are failing to comply with the terms and conditions of the General Permit requiring the preparation, implementation, review and update of an adequate SWPPP, the elimination of all non-authorized storm water discharges, and the development and implementation of an adequate monitoring and reporting program.

The General Permit also requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition D(1)(b).

As part of the monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least 1 storm per month during the wet season (October through May) and record their findings in an Annual Report. Dischargers must also collect and analyze storm water samples from at least 2 storms per year in compliance with the criteria set forth in Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution in compliance with Section B(7).

Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1 of each year to the executive officer of the relevant Regional Water Quality Control Board. Section A(9)(d) of the General Permit requires the discharger to include in the annual report an evaluation of the discharger's storm water controls, including certifying compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. 65 Fed. Reg. 64746, 64767 (Oct. 30, 2000). California Toxic Rule limitations are also applicable to all non storm water and storm water discharges. (40 C.F.R. part 131).

The Regional Water Quality Control Board has established water quality standards for the San Francisco basin. This water quality control plan, or Basin Plan, includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.



## **VIOLATIONS**

River Watch contends that between January 22, 2008 and January 22, 2013, the Dischargers violated the CWA, the Regional Board's Basin Plan and the Code of Federal Regulations by discharging pollutants to waters of the United States without an individual NPDES permit, without compliance with the General Permit, or in violation of the General Permit.

The violations discussed herein are derived from eye witness reports and records publicly available, or from records in the possession and control of the Dischargers. Furthermore, River Watch contends these violations are continuing.

Richardson Bay is an ecologically critical waterway, and one of the most pristine estuaries on the Pacific Coast in spite of its urbanized periphery, supporting extensive eelgrass areas and sizable undisturbed intertidal habitats. It is a feeding and resting area for an impressive array of estuarine and pelagic birds. Its associated marshes and littoral zones support a variety of animal and plant life. Richardson Bay has been designated an "Important Bird Area," based upon its large number of annual bird visitors and residents, the sightings of California clapper rail and its strategic location in the Pacific Coast flyway. The waters of Richardson Bay are subject to a "no discharge" rule to protect the elaborate and fragile ecosystems present, including a complex fishery, diverse mollusk populations and marine mammals including the harbor seal.

## **REMEDIAL MEASURES REQUESTED**

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Dischargers into compliance with the CWA and reduce the biological impacts of their non-compliance upon public health and the environment surrounding the Hirschfeld marine facility:

1. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series, Sector R: Ship and Boat Building or Repair Yards" (EPA Office of Water, EPA-833-F-06-033, December 2006; ([www.epa.gov/npdes/pubs/sector\\_r\\_shipbuilding.pdf](http://www.epa.gov/npdes/pubs/sector_r_shipbuilding.pdf))).
2. Prohibition of the discharges of pollutants including, but not limited to, spent solvents, oil, heavy metals, ethylene glycol, acid/alkaline wastes, and detergents from the from the marine engine and generator repair and maintenance operations.



3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit.
4. Sampling of storm water at least 4 times per year over each of the next 5 years:
  - a. at "first flush";
  - b. at the first significant rain after "first flush";
  - c. at the first significant rain after April 1;
  - d. at the second significant rain after April 1.

Any discharge from the Hirschfeld site and facility to a water of the United States must be sampled during the 4 sampling events identified.

5. 100% of the discharge from the Hirschfeld site and facility must be discharged through discrete conveyances.
6. Preparation and submittal to the Regional Water Quality Control Board of a "Reasonable Potential Analysis" for the Hirschfeld site and its operations.
7. Preparation of an updated SWPPP including a monitoring program, with a copy provided to River Watch.

### CONCLUSION

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$32,500 per day/per violation for all violations occurring through January 12, 2009, and \$37,500 per day/per violation for all violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Dischargers' violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter, River Watch has cause to file a citizen's suit under CWA § 505(a) against the Dischargers for the violations of the CWA identified and described in this Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if the Dischargers wish to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

*David Weinsoff*  
David Weinsoff

DW:lh  
Attachment A - Map

cc: Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
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Washington, D.C. 20460

✓ Regional Administrator  
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Executive Director  
State Water Resources Control Board  
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